

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3128 of 1997

Date of decision: 7-7-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
SURAT DISTRICT PANCHAYAT

Versus

DINUBHAI J. GAMIT  
-----

Appearance:

MR HS MUNSHAW for Petitioners

MR SHAILESH C PARIKH for Respondent No. 1, 2, 3, 4  
-----

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/07/98

## ORAL JUDGEMENT

This is an appeal under section 30 of the Workmen's Compensation Act, 1923 arising out of the award of the Commissioner for Workmen's Compensation, Surat, in Workmen Compensation (Fatal) Application No.8/98 decided on 2nd July, 1997 under which the claimants (respondents herein) were awarded Rs.73,668/- towards compensation along with penalty at the rate of 50% as well as interest at the rate of 12% from the date of application. The facts of the case are that the deceased Jeevanbhai Bhikhabhai was initially appointed as daily wage clerk with effect from 21st October, 1983. Later on he was regularised with effect from 1st October, 1986. It is not in dispute that Jeevanbhai Bhikhabhai has died as a result of accident arising out of and in the course of his employment. The claimants approached the Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923. Under the impugned award compensation and penalty as stated above has been awarded to the claimants. Hence this appeal before this court.

2. Heard the learned counsel for the parties.

3. Mr. H. S. Munshaw, learned counsel for the appellant contended that deceased Jeevanbhai Bhikhabhai was not appointed as driver by the appellants. On the fateful day he was driving the road-roller without any order or permission of the higher authority, and if any accident has arisen out of and in the course of his employment, his legal heirs are not entitled to any compensation; and the Commissioner for Workmen's Compensation, Surat, has exceeded his jurisdiction in granting compensation in favour of these respondents.

4. On the other hand learned counsel for the respondents claimants vehemently contended that the deceased was driving the road roller earlier to the date of accident. It has further been contended that though the deceased was not appointed as driver of road roller, it is a case where the appellants were taking work from him as driver of road roller as and when regular driver was absent from his duty. On the fateful day also the regular driver of the road roller was absent and to see that the work may not suffer the deceased was asked to work as driver of road roller. The deceased had a valid licence in his favour to drive road roller. It is an accident arising out of and during the course of his employment and therefore the claimants were entitled to

compensation, and the Commissioner for Workmen's Compensation, Surat, has not committed any error, much less jurisdictional error, in awarding compensation, penalty and interest.

5. I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties. Section 30 of the Workmen's Compensation Act, 1923 provides that an appeal shall lie to this court from the order of the Commissioner awarding compensation, interest and penalty, only in a case where substantial question of law is involved. In the memo of this appeal, learned counsel for the appellants has not stated any substantial question of law which is involved in the appeal. Oral submission is made and as such it calls for the consideration of this court whether the ground raised during the course of argument by the learned counsel for the appellants can be stated to be substantial question of law. It is not in dispute that the deceased was having a valid licence to drive road roller and on the fateful day regular driver of road roller was absent. It is true that the deceased was not appointed as driver of road roller, but it is equally true that on the fateful day, in the absence of regular driver, he was driving road roller for the work of the appellants. Much emphasis has been laid by the learned counsel for the appellants on the fact that the deceased was not authorised or permitted by any superior authority to drive road roller, but at the same time it is not the case of the appellants that the deceased was not driving the road roller for the work of the appellants. Secondly, none of his superior officer has objected to his driving the road roller. The appellants cannot be permitted to take such a plea which is nothing but only an unfair and unreasonable plea. It is not unknown that the persons of the category of which deceased belonged has to do many works other than the work assigned to him in the department, and the officers of the department are taking such works without passing any written orders. In case it is really intended by the appellants and they honestly wanted that the deceased could not have done the work other than for which he was engaged, then why specific orders have not been passed that road roller will not be driven by the deceased. Not only this, in absence of regular driver there should have been order not to use road roller. However, If such order was passed by the appellants, their whole work would have suffered. The appellants wanted to take both things in their hands. They wanted that their work may not suffer in absence of regular driver, and permitted the deceased to do the work of road roller driver. Therefore the plea taken by the

respondents is nothing but only dishonest plea. The learned counsel for the appellant is unable to make out a case that any question of law, much less substantial question of law, arises in this appeal.

6. In the result this appeal fails and the same is dismissed. The claimants are unnecessarily dragged into litigation, which costs them heavily. The appellants are therefore directed to pay Rs.1,000/- towards cost of this appeal to the respondents -claimants. Taking into consideration the fact that the amount of compensation may not be misutilised or misapplied, in the interest of justice it is directed that out of the awarded amount with accrued interest, Rs.5,000/- each shall be paid to the respondents-claimants, and the balance amount be deposited in long term fixed deposit and the quarterly interest accruing thereon be paid to the respondents-claimants in equal proportion. Initially the investment may be made for a period of five years, and it may be renewed for further five years.

...